



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
SUITE 900 - 1340 POYDRAS ST.
NEW ORLEANS LA 70112
(504) 658-3500 FAX NO. (504) 658-3598

CITY CIVIL SERVICE COMMISSION
BRITTNEY RICHARDSON, CHAIRPERSON
JOHN H. KORN, VICE-CHAIRPERSON
CLIFTON J. MOORE, JR.
MARK SURPRENANT
RUTH WHITE DAVIS

Thursday, May 11, 2023

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Ms. Jessica Vasquez
400 Poydras Street, Ste. 900
New Orleans, LA 70130

Re: **LaBarron McClendon VS.
Sewerage & Water Board
Docket Number: 9386**

Dear Ms. Vasquez:

Attached is the decision of the City Civil Service Commission in the matter of your appeal.

This is to notify you that, in accordance with the rules of the Court of Appeal, Fourth Circuit, State of Louisiana, the decision for the above captioned matter is this date - 5/11/2023 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Orleans Tower, New Orleans, Louisiana.

If you choose to appeal this decision, such appeal must conform to the deadlines established by the Commission's Rules and Article X, 12(B) of the Louisiana Constitution. Further, any such appeal shall be taken in accordance with Article 2121 et. seq. of the Louisiana Code of Civil Procedure.

For the Commission,

A handwritten signature in blue ink that reads "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Ghassan Korban
Ashley Ian Smith
Jay Ginsberg

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**LABARRON McCLENDON,
Appellant**

Docket No. 9386

v.

**SEWERAGE & WATER BOARD,
Appointing Authority**

DECISION

Appellant, LaBarron McClendon, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from his July 5, 2022, termination of employment by the Sewerage & Water Board for failing to meet the minimum qualifications of his position. (Exhibit HE-1). A Hearing Examiner, appointed by the Commission, presided over a hearing on March 23, 2023, limited to the threshold issue of whether Mr. McClendon obtained permanent status. At this hearing, both parties had an opportunity to call witnesses and present evidence.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from the hearing, all exhibits submitted at the hearing, the Hearing Examiner's report dated May 7, 2023, and controlling Louisiana law.

For the reasons set forth below, Mr. McClendon's appeal is DISMISSED, as he has no right of appeal.

I. FACTUAL BACKGROUND

The Sewerage & Water Board hired LaBarron McClendon on November 18, 2019, as a Utility Human Resources Administrator at a salary of \$100,030. (Ex. SWBNO-21; Tr. at 14). This position was a part of the classified service, and the probationary period was one year. (Ex.

SWBNO-3; Tr. at 30). Mr. McClendon exercised oversight over all of Sewerage & Water Board Human Resources. (Tr. at 14). When Mr. McClendon applied for the position through the Department of Civil Service website, the published preferred qualifications for the position included “Related Professional Certification such as SHRM-SCP or SPHR.” The NOTE on the published job description read as follows:

If appointed, a related professional certification in human resource management such as SHRM-SCP or SPHR must be obtained during the probationary period. No probationary period may last longer than one year. Failure to obtain a professional certification in human resource management will result in termination.

(Ex. SWBNO-3; Tr. at 23-24). The posting on the Indeed platform, where Mr. McClendon learned of the vacancy, also included this note. (Ex. SWBNO-7; Tr. at 19). Mr. McClendon testified that he did not read the notes section of the job posting. (Tr. at 26). Mr. McClendon conceded that he did not obtain the certification during his probationary period. (Tr. at 24). The Personnel Director authorized changes in Mr. McClendon’s status from probationary to transient, then provisional, resulting in a one and one-half year extension of time to obtain the certification. (Tr. at 96).

On July 28, 2020, when the Sewerage & Water Board sought to “reallocate” McClendon to a higher classification (Utilities Senior Services Administrator, Class Code C3038), (Ex. SWBNO-4), Civil Service Staff discovered that Mr. McClendon had not met the minimum qualifications for his current position. (Tr. at 84). On August 6, 2020, Robert Hagmann in Civil Service requested a copy of the certification. (Ex. SWBNO-5). On October 21, 2020, David Callahan, Chief Administrative Officer for the Sewerage & Water Board, raised a “troubling issue” with the Director of Personnel by email, namely, whether the professional certification was required for McClendon’s position. (SWBNO-6). The Sewerage & Water Board argued to the Personnel Director that Mr. McClendon was not required to obtain the certification. (Tr. at 88).

However, as the Personnel Director conveyed to Mr. Callahan on October 28, 2020, the Sewerage & Water Board had requested in August of 2019 that Civil Service staff include this requirement in the minimum qualifications. (Exs. SWBNO-7, SWBNO-24). Shelly Stolp, the Personnel Administrator over Recruitment who worked with the Sewerage & Water Board on the minimum qualifications, testified that this requirement was included at the request of David Callahan. (Tr. at 180).

The Personnel Director testified that the Civil Service Department required Mr. McClendon to meet all the minimum qualifications to be transparent with the public. (Tr. at 129). The Personnel Director explained that other individuals may not have applied for this position because they did not possess the published minimum qualifications. (Tr. at 130).

As the result of numerous communications between the Sewerage & Water Board and Civil Service staff, including the Personnel Director's October 28, 2020, email, the Personnel Director authorized the Sewerage & Water Board to place LaBarron McClendon into a transient position to give him additional time to obtain the professional certification and meet the minimum qualifications of his position. (Ex. SWBNO-7). The Personnel Director explained that transient status is limited to 90 days, and that the purpose of the change in status was to give Mr. McClendon additional time to meet the requirements of the job posting. (Tr. at 86-87).

On November 6, 2020, Jacqueline Hadley-Boatman, a subordinate to Mr. McClendon in Sewerage & Water Board Human Resources, sent Mr. McClendon a letter informing him he had achieved permanent status. (Ex. SWBNO-9; Tr. at 42, 56). David Callahan, the Chief Administrative Officer at the Sewerage & Water Board and Mr. McClendon's immediate supervisor, testified that he had no knowledge of this letter from Ms. Hadley-Boatman to Mr. McClendon. (Tr. at 224). Mr. Callahan testified that Ms. Hadley-Boatman's letter was insufficient

to give Mr. McClendon permanent status. (Tr. at 248). The Civil Service Department never informed Mr. McClendon he had achieved permanent status. (Tr. at 41).

According to Civil Service Department records, the Sewerage & Water Board submitted a requisition on November 9, 2020, to transfer McClendon from probationary status to transient status. (SWBNO-8). David Callahan, Chief Administrative Officer for the Sewerage & Water Board, and Ghassan Korban, Executive Director, signed the requisition. (Ex. SWBNO-8; Tr. at 50). Miera Moore from the Sewerage & Water Board Human Resources Department, who testified at the hearing of this matter, submitted the requisition. (Ex. SWBNO-8). This requisition was approved by Civil Service staff on November 12, 2020. (SWBNO-8). Mr. McClendon understood that the purpose of this change in status was to give him additional time to obtain the required certification. (Tr. at 51). The Sewerage & Water Board requested the change in status before the expiration of Mr. McClendon's probationary period. (Tr. at 52).

After the Sewerage & Water Board discovered that "transient" status would negatively affect McClendon's benefits, the Personnel Director authorized changing McClendon's status from transient to provisional. (Ex. SWBNO-12; Tr. at 88). Ms. Horowski, Sewerage & Water Board Chief of Staff, informed McClendon by email on December 17, 2020, following a "wrap-up call with [the Personnel Director]," McClendon would be classified as provisional instead of transient retroactive to November 16, 2020. (Ex. SWBNO-12). The Personnel Director emailed Mr. McClendon on December 18, 2020, advising him of the procedure for Sewerage & Water Board Human Resources to request a change of his status from transient to provisional. (SWBNO-13). The Commission extend McClendon's provisional status in 2021 and 2022, as required by Rule VI, section 5.3. (Ex. SWBNO-10). The Commission extended this provisional status at its

January 25, 2021, meeting, and again at its January 24, 2022, meeting. (Exs. SWBNO-16, SWBNO-17).

On December 29, 2020, the Personnel Director informed Mr. McClendon that LinkedIn training courses could not be used to substitute for the professional certification requirement. (Ex. SWBNO-23; Tr. at 73). The Personnel Director explained that “I checked LinkedIn learning and unfortunately the offerings appear to be training courses, not professional certification. Then, I sent him the guidelines that we use for our professional certification pay to help assist in his search.” (Tr. at 166).

On August 9, 2021, the Personnel Director confirmed that the Civil Service Department and the Sewerage & Water Board agreed that Mr. McClendon would be allowed to take the Professional Human Resources (PHR) exam administered by the Human Resources Certification Institute in December 2021, and he would be allowed a re-test in March 2022 if he failed the December exam. (Ex. SWBNO-28). The Executive Director of the Sewerage & Water Board forwarded this email to Mr. McClendon on August 10, 2021, confirming that he agreed with these expectations. (Ex. SWBNO-28).

On June 30, 2022, the Director of Personnel informed the Sewerage & Water Board that McClendon had failed to satisfy the minimum qualifications for Utility Human Resources Administrator. (Ex. SWBNO-20). The Personnel Director informed the Sewerage & Water Board that “Mr. McClendon must be removed from the Utility Human Resources Administrator either by termination or by demotion into a lower job classification that does not require a related professional certification in human resource management.” (Ex. SWBNO-20). The Personnel Director testified that it is within her authority to decide whether a candidate meets the minimum qualifications of the job posting, and Mr. McClendon had failed to obtain the necessary

certification over the two and one-half years in the position. (Tr. at 95, 103). The Sewerage & Water Board terminated McClendon's employment on July 5, 2022. (Ex. HE-1). At the time of his termination, Mr. McClendon's status was a provisional employee.

II. PROCEDURAL BACKGROUND

Mr. McClendon appealed his termination on July 25, 2022. He filed an amended appeal asserting discrimination on August 16, 2022. The Sewerage & Water Board moved for summary disposition on August 16, 2022, on the basis that Appellant had no right of appeal under Civil Service Rule II, section 4.1, because he never achieved permanent status. Mr. McClendon filed an amended appeal on August 16, 2022, adding discrimination as a basis for appeal. The Sewerage & Water Board filed a Motion for Summary Disposition of the Amended Appeal on August 25, 2022. The Commission heard oral argument on both motions at its regular meeting on September 19, 2022. Because of the Chairperson's recusal, the Commission re-set this matter for its October 17, 2022, regular meeting. Ruling on the briefs pursuant to Civil Service Rule II, section 6.2, on November 4, 2022, the Commission denied the portion of the motion for summary disposition addressing permanent status but granted the motion as to the discrimination appeal. On November 21, 2022, the Commission denied the Sewerage & Water Board's motion for reconsideration of its denial of the motion for summary disposition based on Mr. McClendon's lack of permanent status.

III. LEGAL ANALYSIS

The Louisiana Constitution specifically grants to the Civil Service Commission the power to adopt a "uniform pay and classification plan." La. Const., art. X, § 10(A)(1). In addition, the Louisiana Constitution grants to the Commission "broad and general rulemaking and subpoena powers . . . for the administration and regulation of the classified service, including the power to adopt rules for regulating employment, promotion, demotion, suspension, reduction in pay,

removal, *certification, qualifications*, political activities, employment conditions, compensation and disbursements to employees, and other personnel matters and transactions . . .” La. Const., art. X, § 10(A)(1)¹ (emphasis added). “[T]his provision should be construed liberally in favor of fulfilling the goals of civil service.” *New Orleans Firefighters Ass’n, Local 632 v. City of New Orleans*, 590 So. 2d 1172, 1175 (La. 1991) (“*Firefighters II*”). “Rules adopted by the Commission have the effect of law.” *Civil Service Commission of City of New Orleans v. City of New Orleans*, 2002-1812 (La. 9/9/03), 854 So. 2d 322, 328) (citing *Firefighters II*). *See also Thoreson v. Dep’t of State Civil Service*, 433 So. 2d 184, 190 (La. 1983) (holding that State Civil Service Rules have the effect of law). Pursuant to this authority, the Commission adopted Rules of the Civil Service Commission of the City of New Orleans.²

In its rules, the Commission grants to the Director of Personnel the authority to establish a new class or revise an existing class in the classification plan, subject to ratification by the Commission. Civil Service Rule III, § 1.1. The Commission also gives the Director of Personnel the authority to set minimum qualifications for each class: “The Personnel Director *shall* fix minimum qualifications for training, residence, age, health, skill, education, or other qualifications for admission to examination for each class.” Civil Service Rule V, § 2.4 (emphasis added). The Director of Personnel “shall seek appointing authority input into establishing the minimum

¹ Section 10(A)(1) provides as follows: “Each commission is vested with broad and general rulemaking and subpoena powers for the administration and regulation of the classified service, including the power to adopt rules for regulating employment, promotion, demotion, suspension, reduction in pay, removal, certification, qualifications, political activities, employment conditions, compensation and disbursements to employees, and other personnel matters and transactions; to adopt a uniform pay and classification plan; to require an appointing authority to institute an employee training and safety program; and generally to accomplish the objectives and purposes of the merit system of civil service as herein established.” La. Const. Ann. art. X, § 10

² The current version of the rules is publicly available at <https://nola.gov/getattachment/Civil-Service/Commission/Rules/Rules-Updated-3-9-2023.pdf/?lang=en-US>.

qualifications and form of examination.” Civil Service Rule V, § 2.4. The Director of Personnel and the appointing authority must agree on the minimum qualifications before the examination: “No examination will be open to applications until such time as the appropriate appointing authority has signed a draft of the official announcement stating the minimum qualifications and form of examination.” The Commission’s rules also require that job announcements be posted in a “means widely accessible to the public.” Civil Service Rule III, § 2.5. The exam for the Utility Human Resources Administrator was a “rating of training and experience, weighted 100%.” (Ex. SWBNO-24).

Employees appointed to positions in the classified service must serve a “working test period.” Civil Service Rule VII, § 1.1. The announcement for the position of Utility Human Resources Administrator provided a one-year working test or probation period. (Ex. SWBNO-3); Civil Service Rule I (80) (recognizing that “probation period” and “working test period” are interchangeable). Mr. McClendon received an original appointment and was serving his probation period. However, Mr. McClendon did not complete the one-year probation period. The Sewerage & Water Board removed Mr. McClendon from his probationary position on November 9, 2020, before the expiration of his probationary period. Civil Service Rule VII, § 1.1 authorizes an appointing authority to remove a probationary employee from his position.

After the Sewerage & Water Board removed Mr. McClendon from the original appointment, the Sewerage & Water Board placed Mr. McClendon in transient, then provisional status. The Personnel Director could not authorize an extension of the probationary period, because under Civil Service Rule VII, § 1.3, a probationary period cannot extend longer than one year. The Personnel Director authorized these temporary appointments so that the Sewerage & Water Board would not be required to terminate or demote Mr. McClendon for failing to meet the minimum

qualifications of the position. Civil Service Rule VI, § 5.3(a)-(b). Transient and provisional appointments are temporary appointments under Civil Service Rules. Rule VI, §§ 1.1, 5.3. Civil Service Rule I (74) defines a “temporary appointment” as “an appointment for a limited period of service without acquisition by the appointee of any continuing right to be retained as an employee beyond that period.” The appointing authority must obtain the approval of the Director of Personnel before making a transient or provisional appointment. Civil Service Rule VI, § 5.3(a)-(b). Civil Service Rule VI, § 5.3(b) authorizes transient appointments “[w]henver the services of an extra or substitute employee are needed in any position in the classified service for a period of less than three months.” Civil Service Rule VI, § 5.3(a) authorizes provisional appointments when “a vacancy is to be filled in a position of a class for which there are no eligibles available for certification.” Under Rule VI, § 5.3, a provisional appointment may not continue in excess of one year without Commission approval. Rule VI § 5.3(a). At the request of the Sewerage & Water Board, the Commission approved extending Mr. McClendon’s provisional status in January 2021 and January 2022.

Therefore, because the Sewerage & Water Board placed Mr. McClendon in a temporary appointment before the expiration of his probationary period, Mr. McClendon did not obtain permanent status. Under Civil Service Rule II, § 4.1, only regular employees who have obtained permanent status may appeal termination of employment to the Commission. Civil Service Rule I (64) defines a “regular employee” as “an employee who has been appointed to a position in the classified service in accordance with the Law and these Rules and who has completed the working test period.” So, Mr. McClendon has no right of appeal.

At its April 17, 2023, meeting, the Commission considered the appeal of a firefighter who had been placed in provisional status because she had failed to obtain EMT certification, a

minimum qualification of the position of Firefighter I. *McKnight v. Department of Fire*, Docket Nos. 9413, 9414 (Civil Service Commission 5/4/2023). The Commission dismissed this appeal because Ms. McKnight had not obtained permanent status. *Id.*

The November 6, 2020, letter to Mr. McClendon from his subordinate is insufficient to confer permanent status. Civil Service Rule VI, § 3.3 provides that “[a]ppointees must meet the Minimum Qualifications for the job.” The Personnel Director may order the demotion or dismissal of any employee who does not meet the minimum qualifications of his job. Civil Service Rule VI, § 3.3. Therefore, the decision about whether Mr. McClendon met the minimum qualifications for the position of Utility Human Resources Administrator rested with the Director of Personnel. Because the Director of Personnel made this decision, the Sewerage & Water Board lacked the authority to grant permanent status to Mr. McClendon when, in the Director of Personnel’s opinion, he had not met the minimum qualifications for the position. As the Director of Personnel testified, and as the Chief Administrative Officer of the Sewerage & Water Board acknowledged, Ms. Hadley-Boatman lacked the authority to grant permanent status to Mr. McClendon. The letter, sent before the expiration of the probationary period, without the knowledge of Mr. McClendon’s immediate supervisor, and before Mr. McClendon met the minimum qualifications of the position, did not confer permanent status on Mr. McClendon.

IV. CONCLUSION

Mr. McClendon was hired on November 18, 2019. On November 12, 2020, the Civil Service Department placed Mr. McClendon into transient status at the request of the Sewerage & Water Board as he had not yet met the minimum qualifications for his position. Because Mr. McClendon’s one year working test period had not expired, the Sewerage & Water Board had the authority to remove him from the probationary appointment under Civil Service Rule VII, § 1.1.

In December 2020, the Civil Service Department placed McClendon into provisional status retroactive to November 16, 2020, at the request of the Sewerage & Water Board. The Civil Service Commission extended this provisional status at its meetings on January 25, 2021, and January 24, 2022. Mr. McClendon never met the minimum qualifications of his position and was thus never made a permanent employee. Because only employees who obtain permanent status have a right of appeal under Rule II, § 4.1, Mr. McClendon has no right of appeal.

Mr. McClendon's appeal is dismissed.

This the 11th day of May, 2023

WRITER:

J. H. Korn
J. H. Korn (May 10, 2023 11:06 CDT)

JOHN KORN, VICE-CHAIRPERSON

CONCUR:

CJ Moore
CJMOORE (May 11, 2023 08:08 CDT)

CLIFTON J. MOORE, JR., COMMISSIONER

Ruth White Davis
Ruth Davis (May 10, 2023 10:59 CDT)

RUTH DAVIS, COMMISSIONER